

231895



# **CNJ Rail Corporation**

**81 Century Lane \* Watchung, NJ, 07069**

Phone: (908) 361 - 2435 Email: CNJRail@Yahoo.com

February 24<sup>th</sup>, 2012

The Honorable Cynthia T. Brown  
Chief - Section of Administration  
Surface Transportation Board  
395 E Street SW, Room 100  
Washington, D C 20024

**ENTERED**  
Office of Proceedings

**FEB 24 2012**

Part of  
Public Record

Re: STB Docket No. AB-167 (Sub No. 1191-X),

Consolidated Rail Corporation

Verified Notice of Exemption  
Abandonment Exemption  
In Philadelphia, PA

## **ERRATA**

Dear Ms. Brown,

Please find transmitted herewith an amended copy of my pleading of yesterday afternoon.

At 4:45 pm, I transmitted to Barbara Saddler a *Second Request to toll the time period for filing an OFA*, in the above captioned proceeding. As I preparing to seal the envelopes for Conrail's counsel, I reviewed quickly the printed document and realized there where a few errors in the original pleading. Also two footnotes seemed to be missing, and a third footnote was not complete. In addition, the pages in the original pleading were not numbered. Also, the date requested in paragraph 31 was incorrect, it should have read March 9<sup>th</sup>, 2012. Instead it said Friday March 14<sup>th</sup>.2012.

I have corrected all the errors and I have re-served copies of this pleading upon Conrail. Please except this amended copy of yesterdays pleading into the record. I apologize for the errors.

If you should have any questions, please contact me at the phone number provided above.

Respectfully submitted,

*Eric S. Strohmeier* /s/

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Eric S. Strohmeier  
Vice President, COO  
CNJ Rail Corporation  
(908) 361 – 2435 (direct line)

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Docket No. AB-167 (Sub-No. 1191-X)  
CONSOLIDATED RAIL CORPORATION  
-ABANDONMENT EXEMPTION-  
IN PHILADELPHIA, PA**

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**STB Docket No. AB-55 (Sub-No. 710-X)  
CSX TRANSPORTATION, INC.  
-DISCONTINUANCE OF SERVICE EXEMPTION-  
IN PHILADELPHIA, PA**

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**STB Docket No. AB-290 (Sub-No. 552-X)  
NORFOLK SOUTHERN RAILWAY COMPANY  
-DISCONTINUANCE OF SERVICE EXEMPTION-  
IN PHILADELPHIA, PA**

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**Filed for  
ERIC S. STROHMEYER (Individually)**

**- AND -**

**CNJ RAIL CORPORATION**

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**SECOND REQUEST TO TOLL THE TIME PERIOD  
FOR FILING AN  
OFFER OF FINANCIAL ASSISTANCE  
( EXPEDITED HANDLING REQUESTED )**

Now comes your petitioners, Mr. Eric S. Strohmeier, a citizen of the State of New Jersey, whose address is 81 Century Lane, Watchung, NJ 07069 and CNJ Rail Corporation, a New Jersey corporation, whose mailing address is 191 North Avenue, Suite 238, Dunellen, NJ 08812, requesting the Surface Transportation Board (Board) toll the 10 day period for filing an Offer of Financial Assistance (OFA), in the above captioned proceeding.

Petitioners, in support of their request, state:

1. On January 5<sup>th</sup>, 2012, Consolidated Rail Corporation filed a Verified Notice of Exemption to abandon a portion of a line of railroad known as the Berks Street Industrial Track, in the City of Philadelphia, PA. The line is the subject of the above captioned proceeding.

2. On January 25<sup>th</sup>, 2012, the Board published the Verified Notice of Exemption in the Federal Register. (See *Federal Register* FR-4915-01-P, January 25<sup>th</sup>, 2012)

3. On January 30<sup>th</sup>, 2012, pursuant to 49 CFR 1152.27 (A), your petitioners jointly filed a Notice of Intent to File an Offer of Financial Assistance with the Board and concurrently served our notice upon Conrail pursuant to the requirements laid out in the Notice of Exemption.

4. On February 7<sup>th</sup>, 2012, Conrail provided the petitioners with the information they requested and Conrail concurrently filed a copy with the Board..

5. Upon receiving the information form Conrail, the petitioner's discovered a number of discrepancies in the information Conrail had provided the Board, and previous statements made by Conrail in earlier pleadings.

6. Your petitioners have subsequently had a number of conversations with Conrail, and even met with Conrail representatives, to discuss our concerns. Those concerns and issues are discussed briefly in further detail below. On February 17<sup>th</sup>, 2012, your petitioners requested some additional information from Conrail. Due to the President's Day holiday weekend, and the need to find certain requested documents, the parties have not yet been able to exchange the requested information as of yet.

7. Your petitioners spoke again with Conrail's outside counsel on Tuesday, February 21<sup>st</sup>, 2012. The parties have been working together to expedite the exchange of information needed for your petitioners to prepare their OFA. In addition, both parties do not want to unduly delay the proceeding. However, both parties agreed that some of the supplemental information is

important, and highly relevant. Both parties also realize that a short period of time will be necessary, once the information is exchanged, for the petitioners to incorporate the new material into their OFA.

8. To that extent, your petitioners request that the Board **toll the time period for filing an OFA**, for approximately two weeks, until **Friday, March 9<sup>th</sup>, 2012**. Your petitioners believe it is Conrail's intent<sup>1</sup> to not oppose the relief requested. As an act of good faith to all sides, your petitioners, on their own accord, hereby agree to the following stipulation.

### **Stipulation**

9. Your petitioners began the OFA portion of this proceeding by declaring its intention to provide an OFA for the portion of the line from Milepost 2.80 to Milepost 0.00. We reiterate our position herein again. Our OFA will only be for the section of the line from Milepost 0.00 to Milepost 2.80.

10. Your petitioners would request that the Board permit Conrail's Notice of Exemption in this proceeding to be permitted to become **fully effective on Friday February 24<sup>th</sup>, 2012** for the section of the line from Milepost 2.80 to Milepost 2.98. We request that Conrail should be permitted, without any delay, to be able to execute its obligations under the various agreements it has reached with a number of different parties.

11. Conrail has reached a sale agreement with Mr. David Groverman, a Philadelphia area developer. Mr. Groverman and his associates have already acquired other adjacent properties contiguous to the property they are purchasing from Conrail. They have proposed to redevelop all the properties in question. Your petitioners have no desire to see the transaction between Conrail and Mr. Groverman thwarted by an action of the Board. Nor do we have any desire to see the proposed transactions delayed because of an OFA for a section of the line which does not in anyway effect Conrail's proposed transactions.

12. While your petitioners have absolutely no objection at all to Conrail moving forward with its proposed transaction with Mr. Groverman, we also do not wish to interfere, or oppose any plan, which Conrail, *having chosen freely of its own accord* to do, proposes for the disposition of the remainder of the line north of Milepost 2.80. Please note, we said "having chosen freely of it own accord".

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<sup>1</sup> See Exhibit # 1, Copy of email from Conrail's outside counsel to Eric S. Strohmeyer, dated Tuesday, February 21, 2012, sent at 02:51 PM, which is attached hereto.

13. As stated by Conrail in its Verified Notice of Exemption, there is a pending proceeding<sup>2</sup> currently before the Pennsylvania Public Utilities Commission (PA PUC) Your petitioners have some real genuine concerns over how the City of Philadelphia used the Commission's processes to attempt to spur Conrail into taking some sort of action with regards to this line. In short, we feel that the PA PUC proceeding appears to have been brought, without any merit, to simply pressure Conrail into taking action.

14. Your petitioners, by agreeing to this stipulation, do not waive any rights, challenges, or arguments we may have, or decide to make, in the PA PUC proceeding, if at some later time, an opportunity presents itself for your petitioners to be able to participate in that proceeding, or be permitted to intervene in that proceeding.

### **Additional Information Requested From Conrail**

15. On February 17<sup>th</sup>, 2012, your petitioners requested some additional information from Conrail. The petitioners were seeking the following information:

- Where precisely is Milepost 0.0 ?
- Is the extra trackage at Noble St, and Front St. south of Noble St., also included in the section to be abandoned ?
- Where precisely is Milepost 2.80 ?
- Is Milepost 2.80 at the south end of the bridge over the Port Richmond Secondary, or is it at the north end of the bridge ?
- Do you intend to correct the record as to how much track material is actually still in place along the line ?
- Can Conrail produce a deed, made in 1978 as you claim in your pleadings, for the section of the line south of Thompson St. ?

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<sup>2</sup> See: Pennsylvania Public Utility Commission *Docket # A-2008-2035163* in the matter of *Application of the City of Philadelphia to abolish the crossing at 3rd and Allegheny over Conrail and for the removal of the Conrail Bridge and the allocations of costs and expenses incident thereto.*

- If you cannot produce a deed dated for the year 1978, do you intend to correct the record as to what portions of the line were actually sold to the City of Philadelphia in 1978 ?
- Is the property under the former connecting track in the southwest quadrant of the intersection of the Berks St. Industrial Track and the Port Richmond Secondary part of the line to be abandoned ?
- If, as you claim in your Verified Notice of Exemption, none of Conrail's predecessors-in-interest ever owned, or had any legal interest in the track south of Milepost 0.60, how did Conrail come to acquire that section of line without seeking ICC authority to acquire the line ?
- How much of the Berks St. Industrial Track was conveyed to Conrail pursuant to the Final System Plan ?
- What exact legal interests in the Berks St. Industrial Track was conveyed to Conrail, pursuant to the Final System Plan ?

16. Your petitioners need answers to the above questions in order to properly draft its OFA. The answers to the questions are highly relevant to this proceeding. As determined by previous Board proceedings, the Offerors may choose what ever portions or sections of the line they wish to acquire<sup>3</sup> through the OFA process. However, the sections of the line which they make an offer for must be within the geographic area<sup>4</sup> that the carrier has chosen to abandon.

17. For example, the question dealing with the property under the connecting track nearly Milepost 2.80 is highly relevant. If your petitioners offered to acquire up to Milepost

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<sup>3</sup> See: *Railroad Ventures, Inc.—Abandonment Exemption—Between Youngstown, OH, and Darlington, PA, In Mahoning and Columbiana Counties, OH, and Beaver County, PA, STB Docket No. AB-556 (Sub-No 2X), et al., aff'd, R.R. Ventures, Inc. v. STB, 299 F.3d 523 (6th Cir. 2002)*

<sup>4</sup> See: *Delaware and Hudson Railway Company, Inc.—Discontinuance of Trackage Rights Exemption--In Susquehanna County, PA. and Broome, Tioga, Chemung, Steuben, Allegany, Livingston, Wyoming, Erie, and Genesee Counties, NY, STB Docket # AB 156 (Sub No. 25 X) decided Feb 3<sup>rd</sup>, 2005*

2.80, our offer would appear to be within what Conrail has proposed to be abandoned. Conrail would truthfully point out there is significant elevation change at that point. They would certainly argue you can't make a connection at that point without significant engineering work and massive construction efforts.

18. In response, your petitioners would point out the connecting track right of way (complete with track still in place) in the southwest quadrant, is still there and can be used to easily reconnect the lines. The connecting track tied into the Berks St. Industrial Track at Milepost 2.75. Therefore there is no significant engineering or construction required.

19. The legal question that arises is: Is the connecting track, which is contiguous to both the Berks St. Industrial Track, and Conrail's Port Richmond Secondary, part of what is to be abandoned (i.e part of the Berks St. line) or is it part what Conrail is clearly retaining (i.e. part of the Port Richmond line). The only party that can answer that question is Conrail. Abandonment authority is permissive, and what is to be abandoned is the exclusive decision of the carrier who is seeking the authority.

20. What is clear is that the Conrail's Notice of Exemption is silent has to what ancillary track is included in the abandonment section. Your petitioners are requesting this clarification so as to not make an offer for any section Conrail clearly wishes to retain. We also want to make sure to include in our OFA all the necessary sections of the line (including all appropriate ancillary trackage) which is needed to facilitate a connection with Conrail's Port Richmond Secondary Track which are within the abandonment section, and therefore, properly subject to the OFA process.

21. In addition, Conrail continues to represent to the Board that the line has been salvaged from Milepost 0.00 to Milepost 0.60. That statement is completely false. In fact, the line is still very much intact from Milepost 0.00 to Milepost 0.60. What appears to have possibly been salvaged is a small section from Milepost 0.60 +/- (which is located at approximately the intersection of Germantown Ave. and Hancock St, Wildey St, and Allen St.) to Milepost 0.85 +/- (which is located at the intersection of Thompson St. and Cadwallader Ave.).

22. Mr. Vladimir Ushakov was asked to produce a verified statement, with clear photographic evidence, that directly refutes the assertion that the tracks have been removed between Milepost 0.00 and Milepost 0.60. A copy of the color coded map in his verified statement is reproduced herein as Exhibit B. While Conrail may choose to argue it's irrelevant if the tracks are there, or if they are not there, your petitioners would argue that the amount of track that must be restored could play a very big part in determining the outcome of any OFA proceeding. In short, the more street trackage that needs to be restored, the higher the costs are associated with the restoration. Making simple repairs to a ½ mile track which is still in place,



and completely reconstructing a ½ mile of track, would produce two very different results.

23. The two examples cited above, while important, pale in comparison to the red herring issue discussed herein below. Nevertheless, your petitioners are attempting to work together with Conrail to reduce areas of conflict and clear up discrepancies in the record voluntarily. All of the supplemental questions that were asked of Conrail are highly relevant to avoiding serious legal issues which may arise once the OFA proceeding actually begins.

### **The Red Herring - Conveyances made pursuant to the Final System Plan**

24. Conrail has attempted on numerous occasions in this proceeding to disavow any ownership interest in the segment of the line between Milepost 0.00 and 0.60. Notwithstanding the issue of the still intact tracks between Milepost 0.00 and 0.60, Your petitioners would like to point out, that **Conrail's own evidence**, (the valuation maps submitted in this proceeding, and the deed attached to Philadelphia agreement) do not support their position that some mythical change in ownership occurs in the area of Milepost 0.60.

25. The first problem is that the deed to the City of Philadelphia only encompasses the area beginning in the area of Thompson St. and Cadwallader Ave. and proceeds northward, along American Ave., to Indiana Ave. (near Milepost 2.70). Nowhere does the deed site, or reference, any street or intersection south of Thompson St. We then turn to Conrail's valuation maps, and in particular, map number 3. Located in the area where Cadwallader Ave. meets American Ave., the Board will find the symbol 1M located in what appears to be a flag like box where the tracks extending to Germantown Ave reach the mainline. That item denotes the location of the milepost. In this case, it is Conrail's own evidence as to the location of Milepost 1.00.

26. If the Board were to examine all 6 of the maps carefully, you would discover the maps clearly denote mileposts at 1/4 mile intervals. Map # 2 clearly delineates the locations of Milepost 0.75, and Milepost 0.50. If the Board then clearly re-reads the 1978 agreement, and then reviews the deed which went along with the agreement, and then compares them to the valuation maps, it would appear that the City's 1978 agreement stops at Milepost 0.85, not Milepost 0.60, as Conrail has stated it goes to. In short, there is a significant discrepancy between Conrail's own documents and what they state in their Verified Notice of Exemption.

27. In addition, there is absolutely no references on the Valuation Maps that would indicate a change in ownership at Milepost 0.60 that supports Conrail's position that there is some change of arrangements at that location. In addition, all the valuation maps clearly identify the entirety of the line to have belonged to the North Pennsylvania Railroad, and operated by

the Philadelphia and Reading Railroad Company. It should be noted that it is fairly common knowledge that the Philadelphia and Reading Railroad was indeed a “predecessor road” of Conrail’s.

28. All this brings us to the “red herring” issue. Despite Conrail’s gyrations to the contrary, there can be no doubt that the only way Conrail received this line was via the Final System Plan and the provisions set forth in 45 U.S.C, Chapter 16. In doing our due diligence, and seeing the inconsistent positions taken by Conrail, we decided that we must determine precisely what Conrail actually received in the conveyance.

29. Conrail has stated what it believes it has. The plain language found in the statutes suggests something completely different. What is known, is that the Board can not make the determination as to what was conveyed to Conrail pursuant to the plan. Only the Special Court can make that determination<sup>5</sup>. We might point out, if the parties can’t agree as to what is actually being conveyed pursuant to the OFA (because of the underlying dispute as to what went into Conrail), a scenario could easily arise that may see the Board have its hands effectively tied behind its back if it finds itself asked to set terms and conditions.

### **Conclusions**

30. Your petitioners do want to state for the record that Conrail has worked with us diligently to facilitate our requests. We understand these issues are complex, but it is hoped that the parties can reach an agreement to resolve many of these discrepancies voluntarily, and cooperatively. A voluntary agreement would be vastly superior to a Board mandated conclusion. To that end, the parties will continue to work collectively to achieve a workable agreement together.

THEREFORE, Your petitioners, having not yet received the additional needed information from Conrail, request that the Board:

Toll the 10-Day time period for filing an Offer of Financial Assistance until Friday, March 9<sup>th</sup>, 2012.

Permit Conrail’s Notice of Exemption for the section of the line Between Milepost 2.80 and 2.98 to become fully effective on Friday, February 24, 2012.

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<sup>5</sup> See *Consolidated Rail Corporation, et.al vs STB Docket number 07-1401*, Before the US Court of Appeals for the District of Columbia, decided June 26<sup>th</sup>, 2009

And request any additional relief that the Board may deem just, and necessary, to carry out the requested relief.

On behalf of myself (individually) and  
On behalf of CNJ Rail Corporation

Respectfully Submitted,

*Eric S. Strohmeyer* /s/

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Eric S. Strohmeyer  
Vice President, COO

Dated: February 23<sup>rd</sup>, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23<sup>rd</sup> day of February, 2012, a copy of the foregoing Second Request to Toll the Time Period for Filing an Offer of Financial Assistance, was served by first class mail, postage prepaid, and via electronic mail, upon:

Mr. Benjamin C. Dunlap, Jr. Esq.,

Nauman, Smith, Shissler & Hall, LLP,  
200 North Third Street,  
18<sup>th</sup> Floor, Harrisburg, PA 17101  
(717) 236 - 3010, Ext. 21

Counsel for Consolidated Rail Corporation, et. al.

Mr. John K. Enright, Esq.,  
Associate General Counsel,  
Consolidated Rail Corporation,  
1717 Arch Street, 32nd Floor,  
Philadelphia. PA 19103.

Respectfully Submitted

*Eric S. Strohmeyer* /s/

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Eric S. Strohmeyer  
Vice President, COO  
CNJ Rail Corporation

# Exhibit 1

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Re: Fw: due date for OFAs

Tuesday, February 21, 2012 2:51 PM

From: "Benjamin Dunlap" <bdunlapjr@NSSH.com>

To: "Eric Strohmeyer" <esstrohmeyer@yahoo.com>

Dear Mr. Strohmeyer,

In conjunction with your offer to stipulate that Conrail's Notice of Exemption should be allowed to become effective on February 24, 2012, for that portion of the line north of MP 2.80 (i.e., from MP 2.80 to 2.98), Conrail will agree to your request that the time period for filing your OFA be tolled until March 9, 2012.

Sincerely,

Benjamin C. Dunlap, Jr., Partner  
Nauman, Smith, Shissler & Hall, LLP  
200 North Third Street, 18th Floor  
P. O. Box 840  
Harrisburg, PA 17108  
Phone: 717-238-3010 Fax 717-234-1925  
email: [bdunlapjr@nssh.com](mailto:bdunlapjr@nssh.com)

[www.nssh.com](http://www.nssh.com)

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>>> Eric Strohmeyer <esstrohmeyer@yahoo.com> 2/21/2012 1:14 PM >>>

Dear Mr. Dunlap,

Please find here below the message from Mr. Brian O'Boyle at the US STB. The attachment should include the actual applicable regulations in this matter.

Also, if you are willing to consider this offer, I am willing to stipulate, as a part of my request for the additional time to Toll the OFA period, that Conrail's Notice of Exemption should be allowed to become effective of Friday for the portion of the line North of MP 2.80. This will legally give Conrail abandonment authority for the portions that encompass your sale agreement, and your agreement with the PA PUC commission, effective on the 24th of Feb.

In short, you will be completely free to move forward with your agreements as of Friday.

<http://us.mc1612.mail.yahoo.com/mc/showMessage?sMid=6&filterBy=&.rand=16054553...> 2/23/2012

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If you are agreeable, I will include that in my request. If you're inclined to agree, the Board will likely issue a decision on Friday that will give you clear authority to move forward with those agreements, thereby keeping only the portion south of MP 2.8 subject to the OFA process.

In light of the fact we are willing to clearly request the above mentioned stipulation, I would also ask you if you might consider agreeing to tolling the time period until Friday, March 9th. We want to be able to make sure we have sufficient time to review all the conveyance documents and make sure our reading of the language in the Final System Plan is accurate

Please advise

Sincerely,

Eric S. Strohmeier  
Vice President, COO  
CNJ Rail Corporation  
908 361 2435

— On Thu, 2/9/12, Brian.OBoyle@stb.dot.gov <Brian.OBoyle@stb.dot.gov> wrote:

> From: Brian.OBoyle@stb.dot.gov <Brian.OBoyle@stb.dot.gov>  
> Subject: due date for OFAs  
> To: ESStrohmeier@yahoo.com  
> Date: Thursday, February 9, 2012, 2:59 PM  
>  
> Mr. Strohmeier,  
>  
> As we discussed, I have attached a copy of 49 C.F.R.  
> 1152.27. If you look  
> at 1152.27(c)(2), it has the rules on filing OFAs when  
> abandonment is being  
> sought through a notice of exemption. Under (c)(i),  
> the notice of intent  
> to file an OFA is due 10 days after Federal Register  
> publication, which in  
> this case would be February 6 (two extra days because 10  
> days falls on a  
> weekend). Under (c)(ii)(B), the actual OFA is due 30  
> days after Federal  
> Register publication, which in this case would February  
> 24. Given this  
> fact, the need to toll the due date for OFAs no longer  
> seems necessary.  
>  
>  
>  
> (See attached file: 49 CFR 1152.27.pdf)  
>  
> Please call me if you have any questions.  
>  
>

<http://us.mc1612.mail.yahoo.com/mc/showMessage?sMid=6&filterBy=&.rand=16054553...> 2/23/2012

> RCPA employees might  
> not be followed by the Board should a formal proceeding be  
> initiated; and  
> spoken or written comments may be withdrawn by the Board at  
> its discretion.  
> All matters discussed with RCPA employees are confidential  
> and subject to  
> the same confidentiality provisions as administrative  
> dispute resolutions  
> pursuant to 49 C.F.R. 1109.3 and 5 U.S.C. 574. Except  
> as specifically set  
> forth in 5 U.S.C. 574, neither RCPA employees nor the  
> parties to an  
> informal matter before the RCPA shall disclose any informal  
> dispute  
> resolution communication.